

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**BOARDS OF TRUSTEES OF  
OHIO LABORERS' FRINGE  
BENEFIT PROGRAMS,**

**Plaintiffs,**

**v.**

**Case No. 2:17-cv-180  
Chief Judge Edmund A. Sargus, Jr.  
Magistrate Judge Elizabeth P. Deavers**

**DAN-RAY CONSTRUCTION, LLC,  
*et al.*,**

**Defendants.**

**REPORT AND RECOMMENDATION**

This matter is before the Court for consideration of Defendants' failure to respond to the Court's Show Cause Order. (ECF No. 32.)

On February 16, 2018, this matter came before the Court for a status conference. (ECF Nos. 31, 32.)<sup>1</sup> While counsel for Plaintiffs appeared and participated in the conference, Defendants failed to appear for the conference, which was their second failure in as many months. (ECF No. 32.) The Court directed Defendants to show cause within fourteen days why the Court should not enter default against them for failure to appear and defend. (*Id.*) The Court specifically advised Defendants that default judgment could be entered against them if they failed to respond to the Show Cause Order. (*Id.*)

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<sup>1</sup> The Court's Order mistakenly refers to the wrong date, December 14, 2018. (ECF No. 32.)

To date, Defendants have not responded to the Court's Show Cause Order. Under the present circumstances, it is therefore **RECOMMENDED** that the Court direct the Clerk to enter default against Defendants and that, once default is entered, that Plaintiffs be permitted to move for default judgment.

### **PROCEDURE ON OBJECTIONS**

If any party seeks review by the District Judge of this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties objections to the Report and Recommendation, specifically designating this Report and Recommendation, and the part in question, as well as the basis for objection. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b).

The parties are specifically advised that the failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *See, e.g., Pfahler v. Nat'l Latex Prod. Co.*, 517 F.3d 816, 829 (6th Cir. 2007) (holding that "failure to object to the magistrate judge's recommendations constituted a waiver of [the defendant's] ability to appeal the district court's ruling"); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005) (holding that defendant waived appeal of district court's denial of pretrial motion by failing to timely object to magistrate judge's report and recommendation). Even when timely objections are filed, appellate review of issues not raised in those objections is waiver. *Robert v. Tesson*, 507 F.3d 981, 994 (6th Cir. 2007) ("[A] general objection to a magistrate judge's report, which fails to specify the issues of contention, does not suffice to preserve an issue for appeal . . .") (citation omitted)).

**IT IS SO ORDERED.**

Date: March 5, 2018

/s/ Elizabeth A. Preston Deavers  
ELIZABETH A. PRESTON DEAVERS  
UNITED STATES MAGISTRATE JUDGE